



Original citation:

Harding, Maebh and Newnham, Annika (2015) How do county courts share the care of children between parents? Executive summary. Coventry, UK: University of Warwick..

Permanent WRAP url:

<http://wrap.warwick.ac.uk/6827>

Copyright and reuse:

The Warwick Research Archive Portal (WRAP) makes this work of researchers of the University of Warwick available open access under the following conditions. Copyright © and all moral rights to the version of the paper presented here belong to the individual author(s) and/or other copyright owners. To the extent reasonable and practicable the material made available in WRAP has been checked for eligibility before being made available.

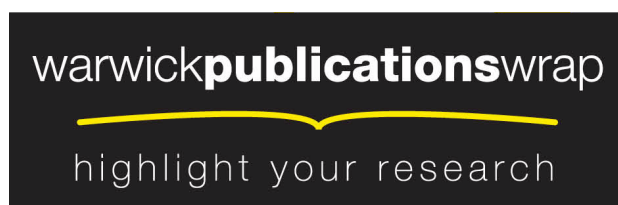
Copies of full items can be used for personal research or study, educational, or not-for-profit purposes without prior permission or charge. Provided that the authors, title and full bibliographic details are credited, a hyperlink and/or URL is given for the original metadata page and the content is not changed in any way.

Publisher's statement:

A note on versions:

The version presented in WRAP is the published version or, version of record, and may be cited as it appears here.

For more information, please contact the WRAP Team at: publications@warwick.ac.uk



<http://wrap.warwick.ac.uk/>

HOW DO COUNTY COURTS SHARE THE CARE OF CHILDREN BETWEEN PARENTS?



SUMMARY REPORT

May 2015

**Dr Maebh Harding,
University of Warwick**

**Dr Annika Newnham,
University of Reading**

CONTENTS

About the Project.....	2
Chapter 2: Applications in Parent cases.....	3
When do parents resort to court proceedings?	3
Mediation and the Need for Court Adjudication.....	4
Who brings the applications and why?.....	4
Where do the children live at the time of application?.....	4
Is contact ongoing?	5
Domestic violence and Child safety concerns.....	5
Chapter 3: the Court Process in children cases	5
Safeguarding Children.....	6
Investigating Domestic Violence.....	6
Children’s Views.....	6
Delay in the system.....	6
Legal Aid and Litigants in Person	6
Chapter 4: Outcomes in parent cases.....	7
Disputes as to where the child should live	7
The use of ‘Shared Residence’ Orders	8
Contact Disputes.....	8
Chapter 5: Court-condoned Timepatterns in Parent Cases.....	9
The most common pattern: Overnight Contact	9
Cases that did not progress to overnight contact	10
No contact cases	10
Domestic Violence and Child Safety Concerns	11
Chapter 6: Non-Parent cases	11
Disputes over whether children should live with a non-parent carer.....	11
Grandparent applications for contact	12
Overall conclusions	12

More information on all the findings introduced in this summary report can be found in the full report, available to download from www.nuffieldfoundation.org/share-care

The Nuffield Foundation is an endowed charitable trust that aims to improve social well-being in the widest sense. It funds research and innovation in education and social policy and also works to build capacity in education, science and social science research. The Nuffield Foundation has funded this project, but the views expressed are those of the authors and not necessarily those of the Foundation.



ABOUT THE PROJECT

The research is based on document analysis of a retrospective sample of 197 case files from the County Courts. The purpose of the project was to examine the different types of child care arrangements reached within court proceedings and confirmed by court order in five selected County Courts in England and Wales within a six month period in 2011. At this time, legal aid for court adjudication of private family law cases was still available, subject to means testing, and there was no legal presumption of parental involvement in a child's care after separation.

The research examines the types of applications that came to court, the role of the court in adjudicating such disputes and the different types of timeshare arrangements reached by parents during the court process. It also looks at a distinct group of cases where one party was not a parent, but typically a grandparent or other relative.

Key findings:

- **Court plays a necessary role in adjudicating private child law disputes and should remain available as a viable option for parents.**
- **The County Courts showed no indications of gender bias in contested cases about where a child should live.**
- **The County Courts actively promoted as much contact as possible even in cases of proven domestic violence, welfare concerns and/or strong opposition from older children.**
- **12% of the sample of private child care disputes involved non- parents such as grandparents or other relative carers. In such cases private law orders are being used as an alternative to public law proceedings.**

The Legal Background

Parents and other carers who want to take a dispute to court about where a child should live or contact with the child must apply for an order under **Section 8 of the Children Act 1989**. These orders are used to determine where a child should live (known in 2011 as a **Residence Order**) or with whom he/she should spend time (known in 2011 as a **Contact Order**).¹ The parent with whom the child lives is commonly known as the resident parent and the parent with whom the child spends time is often known as the non-resident or contact parent.

The Children Act 1989 requires a court to consider a child's welfare as the paramount consideration when deciding whether or not to make the order sought.² This welfare principle requires the court to choose a solution that is in the best interests of the child. The court has a great deal of flexibility and discretion in determining what solution would be best for the particular child in any particular case. This flexibility extends to the practical arrangements of post dispute child care and the type of Section 8 order chosen.

Section 11 of the Children and Families Act 2014 has inserted a presumption into section 1 of the Children Act 1989. This requires the court to presume, unless the contrary is shown, that the involvement of a non-resident parent in the child's life will further the child's welfare. No such presumption was in place when the cases in our sample were decided in 2011.

¹ These orders have now been relabelled Child Arrangements Orders; they are still set out in Section 8 of the Children Act 1989 and are a straightforward replacement for Residence and Contact Orders.

² S1(1) of the Children Act 1989.

Aims of the Study

The aims of the study were

- to examine the details of the different types of timeshare arrangements reached by parents during the court process in the case files examined
- to shed light on how the different types of court orders, then in existence, were used and understood by parents and the courts
- to better understand the role of the courts in adjudicating such disputes.

Methodology

The research is based on document analysis of a retrospective sample of 197 case files from the County Courts. We examined case files from five different County Courts in England and Wales which we code-named Ambledune, Borgate, Cladford, Dunam and Essebourne.³

The sample was limited to Section 8 application cases which were disposed of by final order in a six month period between February and August in 2011.

We found that 12% of the cases examined were not disputes between two feuding parents but instead involved a non-parent such as a grandparent or other relative. The issues in these cases were different. For analysis purposes, we divided our population of case files into two different types of dispute; those between two parents (parent cases) and those between a parent and a non-parent (non-parent cases).

Chapters 2, 4 and 5 focus on the 174 parent cases. The role of the court in adjudicating all 197 cases is examined in Chapter 3. Chapter 6 looks more closely at the 23 non-parent cases.

CHAPTER 2: APPLICATIONS IN PARENT CASES

This chapter examines the reasons given by parents for applying to court and the different types of order sought in the **174 parent cases**. It concludes that **even within the litigating population, court is not the first option for parents and that there was a clear need for court adjudication in many of these applications which could not have successfully been diverted to mediation**. The levels of domestic violence and reported child protection issues meant that many cases were simply too problematic for private ordering. In a number of cases a legally binding order was required, not a mediated agreement.

When do parents resort to court proceedings?

Even within the litigating population, court is not the first option for parents. Only 17% of applications to court were made at the point of relationship breakdown. In 56% of cases the parents had attempted to set up their own arrangements for separated parenting that had been in place for at least one year.

23% of applications were made after a previous court order had determined the issues. Most of these repeat applications involved orders which had been in place for a considerable period of time and were no longer suitable in the circumstances.

The comparatively low proportion of our cases which were returning to court to change a previous order challenges the idea that our Family Courts are mainly clogged up with angry parents who return

³ The names are fictional and were selected from disused names in the Domesday Book. Demographic information about the areas is taken from 2011 Census and demographic info posted by the Local Council.

to court again and again primarily to revisit their own adult conflicts. Although we discovered a small number of cases where parents returned to court again and again, these were a tiny minority.

Mediation and the Need for Court Adjudication

Only 7% of court applicants stated that they had tried mediation before resorting to court action.

39% of applicant parents gave a reason why they had not engaged in mediation. The most common reason given for rejecting mediation was that the respondent parent had refused mediation. Others cited concerns about the other parent's ability to care for the child (commonly linked to children's services involvement), or past domestic violence which left the applicant feeling fearful. A number of parents had been assessed as not suitable for mediation while others expressly wanted a court adjudication on a particular issue or a formal court order. A further group of applications were also made without the respondent having been given notice, typically because of risks of abduction or violence, making mediation a practical impossibility.

It seemed to us that many of these parties gave valid reasons why mediation would not be a suitable method of resolving their dispute and why court adjudication was required. This raises questions about whether the current system is appropriately set up to deal appropriately with parents for whom mediation is unsuitable.

Who brings the applications and why?

70% of applications were made by fathers whereas only 30% of our cases started with an application by a mother.

The most common type of court application was for an order to allow contact, making up 41% of our sample. 96% of all contact applications were made by fathers. **The majority of these applications were made in order to initiate or restart contact.**

Applications which sought a sole residence order made up 43% of the sample.⁴ Similar numbers of applications for sole residence were made by fathers (32) and mothers (30) but their reasons for going to court differed.

Mothers sought to protect the long-term status quo where this was under threat, for example, due to risk of abduction. Many of these applications made allegations of domestic violence and sought protective orders. **Fathers seeking a sole residence order sought to change the status quo or to reflect a recent change in care.** Many of these application featured serious fears about the children's safety which were shared by social workers or healthcare professionals.

Applications for shared residence orders were very rare making up only 7% of the sample. Parental understanding of the term 'shared residence' varied. Some of these applications by fathers spoke of wanting equal status and the need to avoid marginalisation.

Where do the children live at the time of application?

In 60% of the parent cases, the children lived with their mother at the time of the application and she had been the established primary care giver (for at least one year). In 10% of cases children were living with their father who was the established primary caregiver at the time of application.

Children remained in the care of their mother in most of the 17% of cases where the application was made at the stage of initial relationship breakdown.

⁴ 74 out of 174 cases.

These findings reflect the social reality in our sample areas the women were more likely to take on the role of primary care giver following relationship breakdown.

Is contact ongoing?

In 51% of our sample, the child had no contact with one parent at the time of the application. In most of these cases the child's contact with the father had ended. There were often good reasons for this temporary breakdown in contact, including involvement from children's services, and court adjudication was required before contact could be recommenced.

Domestic violence and Child safety concerns

Allegations of domestic violence were raised in nearly half of the parent cases (86 out of 174). Most allegations were made by mothers against fathers. The new LASPO evidential requirements were satisfied in just 45 of the cases in which allegations were made.

The alleged violence in some of the cases which did not fulfil the LASPO criteria was extreme and evidence to support the allegations was generated as the case unfolded. Such cases would not be eligible to receive legal aid for court adjudication under the current legal aid system.

An allegation that at least one of parents was unable to care for the child or presented some kind of serious risk of harm was made in 79 of the 174 parent cases, (45%). Drug or alcohol abuse featured in 30 cases, often in combination with other risk factors.

Local authority children's services were involved in 43 of the cases, and many files contained documents which showed that social workers had recommended, or had even insisted upon, the applications in order to keep the children safe. **This demonstrates that far from being trivial cases about feuding parents, private child law cases often occurred in conjunction with child protection assessments where the risk to child safety is high.**

CHAPTER 3: THE COURT PROCESS IN CHILDREN CASES

This chapter examines the role taken by the County Court in adjudicating all 197 disputes. It concludes that court plays a necessary role of the court in adjudicating disputes between parents and should remain a viable option for parents.

The courts' pragmatic problem-solving approaches used the available resources well, and allowed parents time and space to rebuild mutual trust and reach their own compromises where that was possible.

Formal fact-findings and contested final hearings were rare even in cases where allegations of domestic violence were made or where serious child safety concerns were raised.

The court adjudication process

Far from being a one off legal adjudication, resolution was commonly achieved by a gradual process. Only 27 of the 197 cases proceeded to a full, contested hearing.

The court used directions hearings and multiple informal review hearings, which allowed a gradual reintroduction of contact, progressed the dispute and built trust between parties. Most hearings were short; listed for 15 minutes.

The courts were attempting to save time and minimise costs for the parties. They were also allowing the parties to reach a workable outcome 'little by little'.

There was no evidence of an over-reliance on experts. In some instances GPs and other medical personnel wrote letters outlining parents' conditions, but full reports from instructed experts (other than Cafcass or children's services) were rare.

57% of the final orders in our sample were marked as consent orders. There is no evidence that the court amplified conflict. The process allowed the parties, and their solicitors, to reach compromise solutions that were embodied in court orders.

Safeguarding Children

Some kind of safeguarding inquiry had taken place in 89% of all cases. In 51% of cases the court had access to a Section 7 report written by a social worker for Cafcass or children's services.

The courts' approach to child welfare concerns was usually pragmatic. Where residence was ruled out, the question for the court was how much contact could safely be ordered in the circumstances.

Children's services were part of the solution in many cases, either by providing information to the court or by actively trying to resolve the issues. Concurrent child protection proceedings were not unusual. Grandparents played a vital role in achieving a safe and stable resolution for children in cases involving domestic violence or concerns about parenting capacity.

Investigating Domestic Violence

Court investigations into the truth of domestic violence allegations were rare and took place in only 21 of the 86 cases in which allegations of domestic violence were made, i.e. just under a quarter.

Where fact-findings were held, few ended in a clear determination on the alleged facts. **Instead, the question of domestic violence tended to be reconceptualised as being primarily about reducing the risk to the child and facilitating as much contact as was possible in the circumstances.**

Children's Views

The court was made aware of children's wishes and feelings in 39% of cases, usually through a Section 7 report.

Children's views were not generally sought in cases where the parents were in agreement from the beginning.

Considerable efforts were made in a number of cases to persuade angry or reluctant children to have contact, or to increase the amount of contact they were having.

Delay in the system

Very few cases took longer than 2 years and un-expected delays were generally used in a constructive way.

The cases often featured relatively high levels of conflict and positions that initially seemed entrenched and it took time to build trust between the parties.

Time taken in the courts process should not always be viewed as unnecessary delay.

Time taken	No	% of total
Completed within 6 months	69	35%
6 months to 2 years to complete	99	50%
Over 2 years	29	15%

Legal Aid and Litigants in Person

One of the parties was a litigant in person for at least one hearing in 105 cases (53%). One of the parties was in receipt of legal aid in 140 cases (71%). The issues of obtaining legal aid and becoming

a litigant in person were often interconnected, parties had to represent themselves when legal aid was delayed or interrupted.

There were a small number of cases where both parties were litigants in person and they seemed to take up a disproportionate amount of court time and resources.

CHAPTER 4: OUTCOMES IN PARENT CASES

This chapter examines the outcomes in **the 174 parent cases**, looking at the success rate for applicants, where the child was living when the case left the court system and the numbers of different types of final orders made.

It concludes that the County courts showed no indication of gender bias in contested cases about where the child should live. Moreover, contact applications by fathers were overwhelmingly successful.

The outcomes in the cases

There were 215 orders made in the 174 cases. The most common outcome was a stand-alone contact order, made in 75 cases. A sole residence order was made in 65 cases. Most of these residence orders were made in conjunction with contact orders for the non-resident parents to have contact with their children.

Not all the final orders were made for the applicants. 25 residence orders were made for respondents and 42 contact orders were made for respondents.

Types of orders made	Named holder of formal order			
	Mother	Father	Grandparent	Total
Sole residence	40	24	1	65
Shared residence		19	0	19
Contact	27	99	0	126
'No-contact' orders	5	0	0	5
Total number of orders				215

Disputes as to where the child should live

We found no gender bias from the court when it came to deciding where the child should live in contested cases. The success rate for mothers and fathers who applied for residence orders was broadly similar. Of the 32 applications for a sole residence order by fathers, 16 ended in a sole residence order: a success rate of 50%. Of the 30 applications by mothers for sole residence; 19 ended in a sole residence order: a success rate of 63%.

A higher number of residence orders were made for mothers than for fathers but this was due to the number of orders made for respondents in contact application cases who were mainly mothers.

Where residence was contested, courts tended not to expose children to the upheaval of a move unless there were serious concerns about the current primary carer's ability to look after them.

Transfers of sole residence were thus rare but the cases were disproportionately likely to be transfers from mum to dad and to feature welfare concerns and children's services involvement.

Proven allegations of domestic violence were not a bar to a residence order for the child to live with that parent. In cases with multiple issues the courts had to choose the least bad solution.

The use of ‘Shared Residence’ Orders

The outcome of a shared residence orders was comparatively rare, occurring in 19 cases (11%). Only 6 of the 12 applications for shared residence were successful. There were a further 23 cases where the order was suggested during the case, 13 of those ended with a shared residence order.

We found confusion among litigants and legal professionals as to what exactly a shared residence order was for. In 7 of the 19 cases in which a shared residence order was made the children’s time was shared more or less equally and there was no primary care giver. In the other 12 cases, the shared residence order was used to achieve a transfer of primary care from mum to dad or in the hope that it would reduce conflict. The relationship between shared residence orders and domestic violence was more complicated. In a number cases the courts rejected the label of shared residence because of violent or controlling behaviour; in other cases the label was used to reduce the level of conflict.

The courts’ use of shared residence orders highlighted the complex relationship between practical realities and symbolic messages about parental status and the confusion this sometimes caused. Many of these cases were so complex or bitter that we felt it was unrealistic to expect the name of the formal order to improve things for the children.

Contact Disputes

Contact orders were the most common type of order made. 126 contact orders were made: 99 for fathers and 27 for mothers. Applications by fathers for contact orders were successful in 88%.⁵ Few mothers applied for contact orders.

Even without a legislative presumption, facilitating as much contact as was possible in the circumstances was the end goal. Courts and professionals went to great lengths to facilitate contact even in cases of proven domestic violence, often combined with welfare concerns or strong opposition from older children. What mattered most was often that parent’s ability to engage with the court process, and their attitude to their problems. Parents who failed to turn up, who delayed drug tests or denied facts that had been proven against them were much less likely to succeed.

Where non-resident parents cooperated with the court and managed their own expectations, welfare concerns were no bar to contact. The courts’ approach was usually to order as much contact was safe in the circumstances.

‘No contact’ orders were a last resort. A very small number of ‘no-contact’ orders were made in cases where there were proven incidents of domestic violence, but only in cases where additional factors, such as a parent’s lack of remorse, weighed against direct contact.

Role of the court

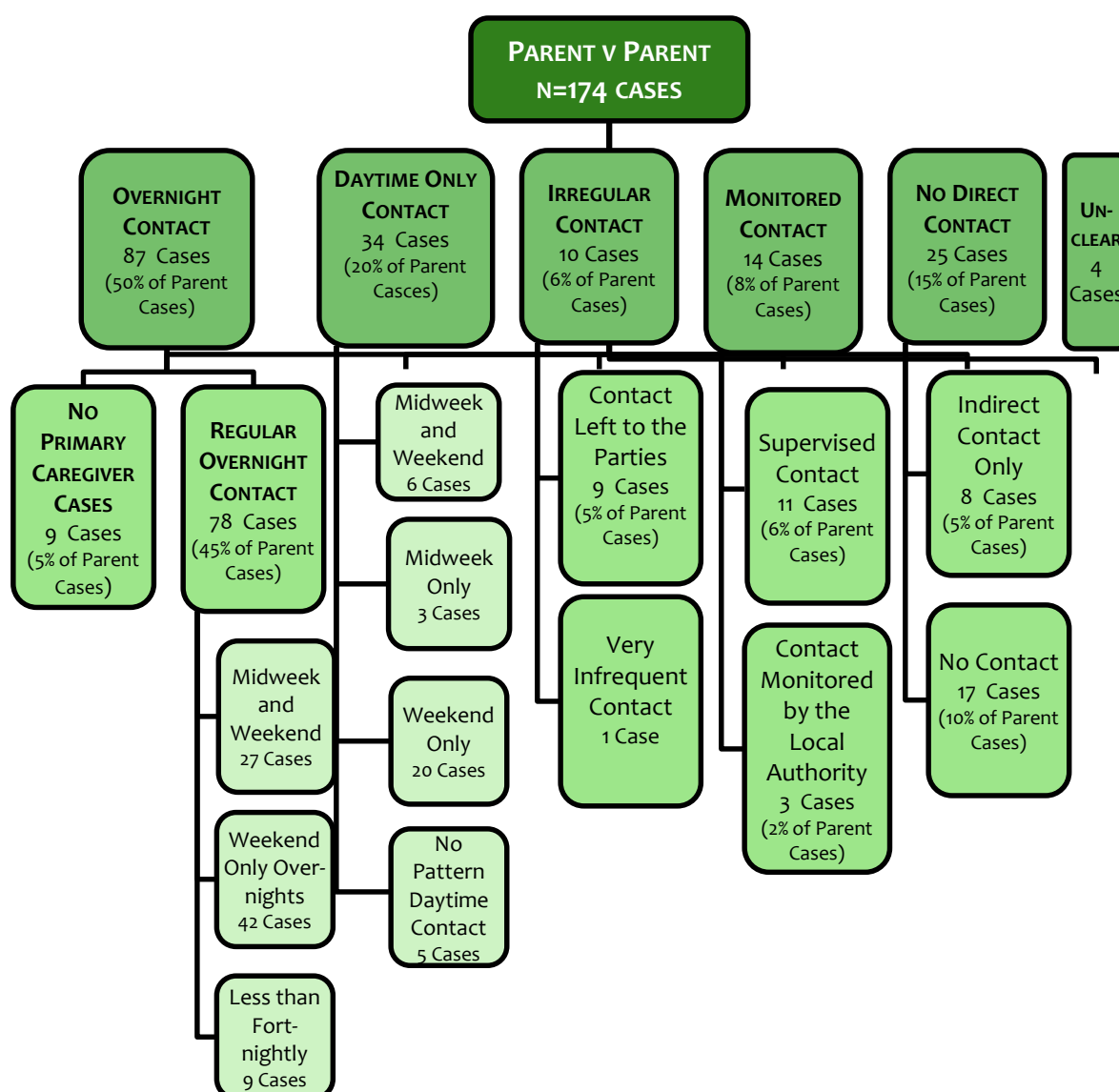
The majority of the cases were resolved by consent order with only 25 cases ending in a fully contested final hearing. **This indicates that far from entrenching conflict, the court helps the parties to negotiate impasses.**

Even in cases where the court made no final order as to contact or residence, court adjudication was sometimes necessary to ensure that contact went smoothly, for example because the primary care giver felt reassured by the framework of protective orders.

⁵ There were so few mothers applying for contact that a comparison is not worthwhile, they were also an atypically problematic group of parents.

CHAPTER 5: COURT-CONDONED TIME PATTERNS IN PARENT CASES

This chapter records all the different ways in which child care was set up to be shared between parents in the **174 parent cases** at the time that the case left the court system. The patterns are divided into six different categories: overnight contact cases, regular day time contact, supervised and monitored contact, irregular contact, indirect contact and 'no contact' cases. **The County Courts actively promoted as much contact as possible even in cases of proven domestic violence, often combined with welfare concerns or strong opposition from older children.**



The most common pattern: Overnight Contact

This was the most common pattern in the sample and half of all the parent versus parent cases ended with regular overnight contact (45%), or near equal shared care (5%).

There was evidence in the case files to suggest that regular overnight contact was seen as the standard, and courts tended to work towards this goal and progress contact to overnight stays wherever possible. Many contact parents were involved with their children both at weekends and during the school week. This is very different to the 'McDad' care pattern, often portrayed as typical

by the media. However, in the majority of overnight care arrangements the largest amount of quality time with the contact parent still happened at the weekend.

Near equal shared care patterns were rare. There were only 9 of these cases where the children's time was divided so evenly that no primary care giver could be identified. The files from cases where such arrangements were being implemented showed the high level of detail needed, the demands it placed on parents, and how those demands were exacerbated (and opportunities for conflict increased) when communication between the parents was poor.

We found a number of cases that caused us concern that equal or near equal care was being used as a way to ensure adult fairness rather than achieving the best arrangement for the children. Serious child welfare concerns were expressed in 4 of these cases, one of which also had proven domestic violence. Given the families' histories and parents' problems it was difficult to feel confident that these were lasting solutions in the children's best interests.

Cases that did not progress to overnight contact

In many cases there were cogent reasons why overnight contact was not possible. Clear reasons for this lack of progression related to a lack of suitable accommodation, child safety concerns, children's wishes or a need to wait until the situation stabilised before moving to overnight contact. In those cases, contact had to remain irregular (6%), daytime only (20%), monitored (8%) or indirect (5%).

The courts made efforts to ensure that the non-resident parent would have the most meaningful contact possible in the circumstances of each case. The next largest category was **daytime only contact**, with 34 cases. It was most common for contact to take place at weekends (20 cases). Yet, we still saw a push towards involved parenting at a day-to-day level, and a judicial desire to allow as much contact as would work in this particular case.

Supervised contact was generally used as an interim solution to build trust and progress contact. There were 14 cases where the final arrangement was for contact to be supervised by a third party (11 cases) or monitored by children's services (3 cases). In these cases, supervised contact was used as long term solution to keep problematic parents involved with their children. This relied on the co-operation of a stable individual to facilitate contact and this burden often fell on grandparents. The benefits of a good, natural parent-child relationship had to be balanced against the need to keep the child safe and secure. In some of these cases children's services involvement was scheduled to continue beyond the final order.

Indirect contact was used as a life line to avoid closing the door on contact in cases where children were vehemently opposed to contact. There were serious and usually proven allegations about domestic violence and/or serious child welfare concerns in 5 of the 8 indirect contact cases. It seemed to us that contact parents' attitude to their problems had a greater effect on outcomes than their actual problems; disengagement or intransigence meant professionals and judges could not enlist the parents into problem-solving compromises.

No contact cases

Approximately 10% of the parent versus parent cases ended without any contact (17 of 174 cases). In 7 of those cases, this was because the non-resident parent failed to appear at court, either for the final hearing or at all. In the other 10 cases, the reasons against contact were set out clearly in the files: some were based on domestic violence or children's vehement objections, and it was not uncommon for these non-resident parents to lead chaotic lives, have erratic parenting styles or battle with multiple problems.

We found no case where the court could be said to have terminated contact without a clear reason. In many order preambles it was also set out that contact would be reconsidered if circumstances changed.

Domestic Violence and Child Safety Concerns

It was clear that domestic violence or child safety concerns were not a *prima facie* bar to contact, but were factors to be taken into account. Whilst past domestic abuse, addiction or mental illness were common complicating factors in these cases, the real obstacle to direct contact was often the parent's attitude. In such cases it would be dangerous to encourage these non-resident parents to think they have a right to contact which is not dependent on personal change.

CHAPTER 6: NON-PARENT CASES

This chapter examines the **23 non-parent cases**.

12% of the cases in our five courts involved a non-parent applicant or respondent such as a grandparent or other relative carer. This sizable minority of cases are very different from what is perceived to be the typical private child law dispute between feuding parents. **In such cases private law orders may be being used as an alternative to care proceedings.** These cases made different demands on the court in terms of time and resources than the paradigm feuding parent cases.

We have concerns that these types of cases are rarely discussed and have been overlooked in the Family Justice Review and recent reforms to the Family Justice system. These cases have a lot in common with care proceedings: the stakes are high and the consequences for the children of getting it wrong can be equally serious whether the child is left in a family or removed.

We are not sure how parent applicants and respondents in these cases will have a fair hearing without access to legal aid. In many cases parents were battling addiction and/or suffering from poor mental health.

This is an area where further research is needed. In certain circumstances the diversion to private law remedies is an inappropriate substitute for the support structures of voluntary accommodation or formal care proceedings. It is important that the applicants in these cases, once they are established as primary carers, are not left to deal with unsettled children and their hostile or troubled parents without any help from children's services.

Disputes over whether children should live with a non-parent carer

In 20 cases the question was whether or not a non-parent should care full-time for a child.

In 15 cases the non-parents were seeking residence **and were commonly supported or encouraged by children's services**. In these cases there were serious concerns about the ability of the parents to care for the child. In all applications by non-parents, the applicant was already acting as the child's full-time carer, and was generally perceived by children's services to be doing a good job.

The non-parents were granted sole residence orders in 13 of the 15 cases. In the remaining 2 cases shared residence orders were made to divide the child's time between the mother and grandparents. In neither case did we feel that this compromise solution worked in the favour of the *de facto* primary care giver.

The remaining 5 of these 20 cases were applications to have children, who were living with relatives, returned to the applicant parents. All cases had a background of serious child welfare concerns, where the relatives had stepped in to take over. The children were returned to their parents in 3 cases, but 2 applicants were unsuccessful. The main factors seemed to be whether there had been regular

overnight contact, and whether the parents could demonstrate both improvement and good engagement with child welfare professionals.

Low Levels of Contact with parents

Where children lived with non-parents, some contact orders were made, but we found less emphasis here on progressing contact than in the parent versus parent cases, often because of the parents' many problems. Where children returned to parents, it was even less common for there to be contact orders for the non-parent.

Contact between parent and child was not such a high priority in these cases due to the high level of disengagement by the parents and range of issues they were battling. It was recognised that increases in contact could be distressing to the children.

Grandparent applications for contact

There were 3 applications by grandparents for contact in cases where there were no concerns raised about the parents' abilities to care for the children.

While the court seemed eager to facilitate contact in these cases its efforts did not go as far as was typical the case in parent cares when facilitating contact with a parent.

OVERALL CONCLUSIONS

1. Court plays a necessary role in adjudicating private child law disputes and should remain available as a viable option for parents.

Our research finds that there is a clear need for court adjudication in private child law cases and that the vast majority of the case files examined could not have been successfully diverted to mediation.

The majority of applicants in our sample had attempted to resolve their dispute themselves before going to court. The decision to apply for a court order was a necessary last resort where attempts had failed and the parties had reached an impasse.

Going to court did not amplify or entrench the conflict between the parties. The vast majority of cases were resolved by consent order; only 25 of the 174 parent cases ended in a contested final hearing.

We saw no evidence of an over-reliance on experts and court resources were managed well.

Time taken in the courts process should not always be viewed as unnecessary delay. Cases need time to build trust between the parties and reach a workable child-centred conclusion ensuring contact was safe.

Cuts to legal aid under the Legal Aid and Sentencing of Offenders Act 2012 means that going to court with legal advice to resolve disputes between parents about child care is now out of the financial reach of most parents, although funding is still available for mediated resolution.

We have concerns that the wholesale diversion of these cases from court through cuts to legal aid will mean that parents will agree to unsafe arrangements where risk factors are not appropriately managed or will be unable to reach agreement about having contact with their children.

2. The County Courts showed no indications of gender bias in contested cases about where the child should live.

Our research found that the success rate for mothers and fathers in applications for orders to have their children live with them was similar within our sample.

The overall number of residence orders made for mothers was higher than those made for fathers as a large number of residence orders were made for mothers as respondents in the high number of cases where fathers sought contact (and both parents agreed on where the children should live).

While transfers of sole residence were rare as the courts as the courts sought to preserve the status quo, where transfers were ordered they were disproportionately likely to be transfers from mum to dad and to feature welfare concerns and children's services involvement.

3. The County Courts actively promoted as much contact as possible even in cases of proven domestic violence, child welfare concerns and/or strong opposition from older children.

Without any legislative intervention, the normal process of the County Courts in 2011 was to increase the level of contact with the non-resident parent until both parents were happy with the child staying overnight. Where this was not possible, the focus was on ordering as much contact as was safe in the circumstances.

4. A sizable minority of private child care disputes involve non-parents such as grandparents or other relative carers.

We have concerns that there is comparatively little debate about the use of Section 8 orders to divert cases from public law remedies and such cases have been overlooked in Family Justice Review and legal reforms. The assumption that parties are capable of reaching their own agreements and that court scrutiny can and should be minimised does not hold true for these families.

Our research identifies an evidence gap that needs further investigation. The handing over from public remedies to private law remedies is not always done in the most transparent fashion. It is important that the no-parent applicants in these cases, once they are established as primary carers, are not left to deal with unsettled children and their hostile or troubled parents without any help from children's services.